IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

Crl.MC.No. 3867 of 2006()

CC.1986/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, ATTINGAL

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PETITIONER: 15TH ACCUSED

BABU, S/O. RAMAKRISHNAN,
APPURA VEEDU, MANCHADIMOODU,
AZHOOR VILLAGE, CHIRAYINKIL.

BY ADV. SRI.M.R.ANANDAKUTTAN
SMT.M.HEMALATHA
SRI.R.S.MADHU
SRI.MAHESH ANANDAKUTTAN

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. SUMAM, W/O. ANIRUDHAN,
'SUMANGALI', NEAR GOVT. L.P.S.,
AZHOOR, KURAKKADA P.O., CHIRAYINKIL.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3867 of 2006

Dated this the 23rd day of November 2006

O R D E R

The petitioner is the fifteenth accused in a prosecution under Section 120B and 465 read with 34 I.P.C. The proceedings were initiated against the petitioner and the other co-accused. There were 16 accused persons, on the basis of a private complaint filed by the defacto complainant. The defacto complainant had alleged that a forged document was created and accused 1 to 11 had got that document executed in favour of the fourteenth accused. It is alleged that this was done in pursuance of a criminal conspiracy hatched at the initiative of the petitioner (accused No.15). The conspiracy was allegedly hatched in the house of the fifteenth accused. The complaint was referred to the police by the learned Magistrate under Section 156(3) Cr.P.C and the police, after completing the investigation, has filed the final report, produced as Annexure 4, raising charges under Sections 120B and 465 read with 34 I.P.C against accused 1 to 15. On receipt of the notice from the court, the petitioner has come before this court with this petition filed under Section 482 Cr.P.C to quash the proceedings initiated against the petitioner.

2. What are the grounds? The learned counsel for the petitioner submits that there is no allegation against the petitioner of any contumacious or culpable overt act except that he was a conspirator. The counsel contends that in these circumstances, the petitioner is entitled to get the proceedings against him quashed by this court by invoking the powers under Section 482 Cr.P.C.

3. I have been taken through Annexures 1 to 4. Arguments have been heard. At this early stage of the proceedings, I am of the opinion that it is not necessary for this court to embark on any detailed discussions or make any observations on the crucial disputed facts. Suffice it to say that I find no reason whatsoever which can justify the prayer for invocation of the powers under Section 482 Cr.P.C.

4. Ordinarily and normally in a situation like this, I would expect the accused person to appear before the learned Magistrate and claim discharge under Sections 239 and 240 Cr.P.C. It is for the Magistrate, ordinarily, to consider the materials produced along with the final report under Section 173 Cr.P.C and to decide whether the proceedings deserve to be continued against the petitioner. If the threshold satisfaction can be entertained, charges shall be framed. If not, the accused will be entitled to be discharged. I am not satisfied

that there are compelling reasons which can persuade this court to undertake an exhaustive consideration of all such materials placed before the learned Magistrate by the investigating officer along with Annexure 4 final report. It is for the learned Magistrate to consider such materials and come to appropriate decisions on the question of discharge. The petitioner must appear before the learned Magistrate and claim discharge and such claim must be considered on merits and in accordance with law by the learned Magistrate.

5. With the above observations, this petition is dismissed. But I may hasten to observe that if the petitioner appears before the learned Magistrate and claims discharge, appropriate decision must be taken under Section 239 and 240 Cr.P.C by the learned Magistrate expeditiously.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006